

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

VENESSA P.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY, S.M., AND V.M.,
Appellees.

No. 2 CA-JV 2016-0151
Filed December 9, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pima County
No. JD20140398
The Honorable K.C. Stanford, Judge

AFFIRMED

COUNSEL

Richard A. Beck, Sahuarita
Counsel for Appellant

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Mark Brnovich, Arizona Attorney General
By Laura J. Huff, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Presiding Judge Howard authored the decision of the Court, in which Judge Espinosa and Judge Staring concurred.

H O W A R D, Presiding Judge:

¶1 Venessa P. appeals from the juvenile court's July 2016 order terminating her parental rights to V.M. and S.M., born in 2005 and 2009, on the grounds of neglect, chronic substance abuse, and nine-month, out-of-home placement. *See* A.R.S. § 8-533(B)(2), (B)(3), and (B)(8)(a). Venessa argues the court committed fundamental error by failing to appoint counsel on her behalf at the "dependency stage in the proceedings" and by finding that service by publication was sufficient. She asks that we vacate the termination order and remand "for a determination of whether [her] rights to counsel and . . . to proper service of process comported with due process requirements." We affirm.

¶2 Before it may terminate a parent's rights, a juvenile court must find by clear and convincing evidence that at least one statutory ground for severance exists and must find by a preponderance of the evidence that terminating the parent's rights is in the best interests of the child. *See* A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). We will affirm an order terminating parental rights unless we can conclude as a matter of law that no reasonable person could find the essential elements proven by the applicable evidentiary standard. *See Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009). We view the evidence in the light most favorable to upholding the court's order. *Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, ¶ 2, 181 P.3d 1126, 1128 (App. 2008).

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¶3 In June 2014, V.M. and S.M. were removed from the father, who was staying at the home of the paternal grandmother; Venessa was “unstable” and homeless at that time.¹ The Department of Child Safety (DCS) filed a dependency petition that same month, and based on DCS’s inability to locate Venessa, the juvenile court found “good cause for the matter to proceed by publication.”² The notice of publication hearing on the dependency petition provided, inter alia, that Venessa was entitled to have an attorney at the dependency hearing, her failure to appear at the dependency proceedings without good cause could result in a waiver of her rights, and the hearing could go forward in her absence and could result in an adjudication of dependency or termination of her parental rights. The court adjudicated the children dependent in October 2014.

¶4 In December 2014, “a couple of months” after she learned the children had been removed from the father and that DCS was involved, Venessa contacted the DCS case manager. The case manager presented Venessa with a case plan, which she signed, and explained she needed to enroll in various classes, work on drug-relapse prevention, and engage in therapy. The plan also required that Venessa “attend all staffings, hearings and Foster Care Review Board” meetings, and that she “maintain contact with the case manager.” In January 2015, Venessa began visiting the children weekly. DCS filed a motion to terminate the parents’ rights in June 2015, initially serving Venessa by publication, but later serving her in person at a December 2015 visit with the children.³ In January

¹The parental rights of the father, who is not a party to this appeal, were also severed.

²Venessa apparently does not assert DCS could have located her in June 2014.

³In both the original notice of publication hearing on the motion for termination filed on June 11, 2015, and in the notice to parent in termination action, which Venessa signed on January 4, 2016, after she had been personally served, Venessa was informed she had the right to an attorney, her failure to appear at any of the

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2016, counsel was appointed to represent Venessa, and a four-day contested severance hearing followed in March, April and May 2016, at which she and her attorney were present. The juvenile court terminated Venessa's parental rights in a formal order in July 2016.

¶5 On appeal, Venessa asserts the juvenile court erred by failing to appoint counsel for her during the dependency proceedings and by finding that "service by publication was sufficient where no counsel had been appointed and the state had actual and predictable knowledge" of her whereabouts in light of her weekly visits with the children beginning in January 2015. Venessa also asserts DCS did not inform her of the "ongoing dependency action and the consequences of [her] failure to participate in her case plan," and maintains she was prejudiced by "the inadequate service and the lack of counsel."

¶6 Venessa's arguments relate to the dependency proceeding and the related October 2014 dependency adjudication, and we cannot address them in this appeal from the July 2016 termination order for two reasons. First, Venessa's notice of appeal states she is only appealing from the juvenile court's termination of her parental rights. *See Lee v. Lee*, 133 Ariz. 118, 124, 649 P.2d 997, 1003 (App. 1982) (appellate court only has jurisdiction to review matters contained in notice of appeal). Second, she did not file a direct appeal in the dependency matter, the manner by which she could have directly challenged issues related to the dependency adjudication. "Orders declaring a child dependent . . . are final, appealable orders." *Rita J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 512, ¶ 4, 1 P.3d 155, 156 (App. 2000). Nor did Venessa ask the court at any time to stay its subsequent termination order so she could challenge the dependency. Therefore, because Venessa appeals from

proceedings without good cause could result in a waiver of her legal rights, and the court could terminate her parental rights in her absence.

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issues arising during the dependency proceeding, we lack jurisdiction to consider her arguments.⁴

¶7 Therefore, lacking jurisdiction over the arguments raised on appeal, we affirm the severance of Venessa's parental rights to V.M. and S.M.

⁴We also reject Venessa's apparent suggestion that she may now challenge the dependency proceedings because the juvenile court considered her conduct during the dependency in terminating her parental rights. Additionally, in light of our finding that we lack jurisdiction of this appeal, we do not address Venessa's claim that fundamental error resulted.